

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MidAmerican Energy Company

Docket Nos. ER96-719-006
and EL05-59-000

MidAmerican Energy Company

Docket Nos. ER96-719-012
and ER96-719-014

ORDER ACCEPTING COMPLIANCE FILING AND
UNCONTESTED SETTLEMENT

(Issued November 9, 2006)

1. On April 3, 2006, MidAmerican Energy Company (MidAmerican) submitted in Docket Nos. ER96-719-012 and ER96-719-014 a compliance filing containing revisions to its proposed FERC Electric Tariff Original Volume No. 11 for sales of capacity and energy in the MidAmerican control area (Sales Tariff) (April 3 Filing). The April 3 Filing is made in compliance with our March 17, 2006 Order, which, among other things, accepted the Sales Tariff for filing and set the cost-based rates for hearing in Docket Nos. ER96-719-006 and EL05-59-000.¹ Specifically, MidAmerican proposes to revise Schedule A of the Sales Tariff, to provide for daily and hourly transactions at “up to” cost-based rates.

2. On May 19, 2006, MidAmerican filed an Offer of Settlement and Settlement Agreement (Settlement) addressing MidAmerican’s cost-based rates in Schedule A of the Sales Tariff that were set for hearing. The Commission Trial Staff and the Resale Power Group of Iowa (RPGI) submitted comments in support of the settlement. On June 28, 2006, the presiding administrative law judge certified the settlement to the Commission as uncontested.

¹ *MidAmerican Energy Company*, 114 FERC ¶ 61,280 (2006) (March 17 Order).

3. In this order, the Commission accepts the Settlement and MidAmerican's compliance filing proposing revisions to Schedule A of the Sales Tariff to provide for daily and hourly transactions at "up to" cost-based rates.

Background

4. On October 29, 2004, as amended on November 23, 2004, MidAmerican submitted for filing an updated generation market power analysis in compliance with the Commission's orders issued on April 14, 2004 and July 8, 2004,² as well as an order on MidAmerican's market-based rate authority issued on July 12, 2004.³ The filing, as amended, indicated that MidAmerican passed the pivotal supplier screen but failed the wholesale market share screen for each of the four seasons considered in the MidAmerican control area. The filing, as amended, further indicated that MidAmerican passed the pivotal supplier screen and the wholesale market share screen in each of the directly interconnected first-tier control areas examined in each of the four seasons considered. As the Commission stated in the April 14 Order, where an applicant is found to have failed either generation market power screen, such failure provides the basis for instituting a proceeding pursuant to section 206 of the Federal Power Act (FPA)⁴ and establishes a rebuttable presumption of market power in the section 206 proceeding.⁵ Accordingly, because MidAmerican's filing indicated that it failed the wholesale market share screen in its control area, the Commission instituted, a section 206 proceeding to investigate generation market power in the MidAmerican control area.⁶ The Commission also established a refund effective date of August 7, 2005, pursuant to the provisions of section 206.⁷

5. In the June 1, 2005 Order, the Commission directed MidAmerican, for the MidAmerican control area, to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it will adopt the

² *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, *AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

³ *MidAmerican Energy Co.*, 108 FERC ¶ 61,043 (2004) (July 12 Order).

⁴ 16 U.S.C. § 824e (2000).

⁵ April 14 Order at P 201.

⁶ *MidAmerican Energy Company*, 111 FERC ¶ 61,320 at P 25 (2005) (June 1 Order).

⁷ 70 Fed. Reg. 33,467 (2005).

April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁸

6. In its August 1, 2005 compliance filing responding to the June 1 Order, MidAmerican proposed tailored mitigation to address its failure of the wholesale market share screen in the MidAmerican control area. Specifically, it proposed to revise its market-based rate tariff to provide that it will not sell capacity and energy under the tariff to serve load that sinks in the MidAmerican control area, and also proposed the Sales Tariff, providing rates, terms and conditions of service for power sales in the MidAmerican control area. The Sales Tariff contained tailored mitigation, in the form of both cost-based rates and a market-based price cap, to address generation market power concerns that were raised in connection with MidAmerican's updated market power analysis

7. Specifically, MidAmerican's proposed Sales Tariff offered two power supply products: (1) negotiated capacity and energy (Schedule A), providing for sales of capacity, at a negotiated rate and level of firmness, and associated energy for periods of one week to one year; and (2) short term energy (Schedule B), which was defined by MidAmerican as sales of non-firm energy for periods of one hour to one month. MidAmerican proposed charges in Schedule A that would be negotiated amounts, subject to "up to" cost-based rate caps.⁹ For Schedule B, MidAmerican proposed negotiated rates capped at the weighted average of the hourly locational marginal prices (LMP) calculated by PJM Interconnection, LLC (PJM) for the applicable hours and days of the individual transactions.¹⁰

8. In the March 17 Order, the Commission accepted MidAmerican's August 1, 2005 compliance filing in part, rejected it in part, and established hearing procedures. With regard to the Sales Tariff, the Commission generally found the terms and conditions of Schedule A acceptable, but set for hearing MidAmerican's proposed cost-based rates for sales under Schedule A, stating its preliminary analysis that the rates had not been shown to be just and reasonable.¹¹ The Commission rejected the proposed Schedule B, however, finding that the proposed rates were not just and reasonable because the April 14 Order and July 8 Order contemplated that mitigation proposals based on rates would be cost-based.¹² The Commission directed MidAmerican to submit a compliance filing within 30 days to either revise Schedule B to set the just and reasonable rate at the default rate or

⁸ June 1 Order, 111 FERC ¶ 61,320 at P 25 (2005).

⁹ See March 17 Order at P 8-11.

¹⁰ See *id.* at P 12-13.

¹¹ *Id.* at P 37-41.

¹² *Id.* at P 43.

propose different cost-based rates (together with cost support) based on MidAmerican's particular circumstances, consistent with the April 14 Order and July 8 Order.¹³

Description of Compliance Filing

9. MidAmerican's April 3 Filing proposes changes to Schedule A of its proposed Sales Tariff, which currently provides "up to" cost-based rates applicable to sales of electric power in the MidAmerican control area that have terms ranging from one week to one year. MidAmerican proposes in the April 3 Filing to modify Schedule A to provide for daily and hourly negotiated capacity and energy transactions, in addition to weekly, monthly, and yearly transactions, that will be made subject to the "up to" cost-based rates, as set forth in the Sales Tariff.

10. MidAmerican states that it has not submitted cost support for the proposed daily and hourly capacity rate caps with this filing because the proposed daily and hourly rate caps are derived directly from the maximum annual demand charge set forth in the August 1, 2005 filing. MidAmerican states that the justness and reasonableness of the annual rate cap will be determined in the hearing procedures directed by the March 17 Order and any change to the annual rate cap resulting from that proceeding will result in a corresponding change to the daily and hourly rate caps proposed.

Description of Settlement

11. The Settlement contains a revised Schedule A to the Sales Tariff, setting forth rates for service under that schedule. In particular, under the Settlement MidAmerican would revise the dollars-per-megawatt components of the rates originally set forth in Schedule A, and add daily and hourly rates consistent with the April 3 Filing. These rates, referred to as "Additional Charge Ceiling Rates," are as follows:

Hourly	\$22.36/MW
Daily	\$358/MW
Weekly	\$1,788/MW
Monthly	\$7,750/MW
Yearly	\$93,000/MW

12. Additionally, under the Settlement MidAmerican would revise section 13 of the Sales Tariff, titled "Seller's System Incremental Cost," to incorporate a specific level of variable operating and maintenance costs (\$4.23/MWh) for inclusion in the calculation of MidAmerican's system incremental cost, and to specify that this variable operating and maintenance costs component will recover all variable operating and maintenance costs in FERC Account Nos. 509-510, 512-513, 528, 530-531 and 544. The Settlement also

¹³ Id.

includes proposed tariff revisions to delete references to Schedule B and definitions of terms solely applicable to that schedule.

Notice of Filing

13. Notice of MidAmerican's April 3 Filing was published in the *Federal Register*, 71 Fed. Reg. 25,835 (2006), with comments, interventions, and protests due on or before May 8, 2006. None was filed.

14. Notice of MidAmerican's May 19, 2006 filing of an uncontested offer of settlement was published in the *Federal Register*, 71 Fed. Reg. 32,530 (2006), with comments, interventions, and protests due on or before June 12, 2006. The Commission's notice also stated that the uncontested offer of settlement constituted an amendment to MidAmerican's April 3 Filing. No comments, interventions or protests were filed.

Discussion

15. MidAmerican's proposed revisions in this compliance filing would replace Schedule B by making Schedule A available for sales (at cost-based rates) from one hour to one week, the time periods that MidAmerican previously proposed to cover with the rejected Schedule B. The Commission concludes that the April 3 Filing complies with the March 17 Order¹⁴ that MidAmerican submit a compliance filing within 30 days that either revised Schedule B to set the just and reasonable rate at the default rate or proposed other cost-based rates based on MidAmerican's particular circumstances, consistent with the April 14 Order and July 8 Order.

16. Additionally, we find that the Settlement, which establishes the rates, terms and conditions applicable to sales under Schedule A of the Sales Tariff, is in the public interest and is hereby approved. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

17. As noted above, MidAmerican's terms under Schedule A range from one hour up to one year. In the April 14 Order, the Commission required long-term mitigation to apply to sales of one year or longer.¹⁵ Thus, we interpret the terms under MidAmerican's Schedule A to apply to sales of less than one year and MidAmerican is required to seek prior authorization for long-term sales of one year or longer. Further, consistent with the

¹⁴ March 17 Order at Ordering Paragraph (G).

¹⁵ April 14, Order at P155.

April 14 Order, sales of one year or longer will be made at cost-based rates and any such sales will be cost-justified.

18. Together, the April 3 Filing and the Settlement set forth the rates, terms and conditions for sales by MidAmerican under the Sales Tariff at cost-based rates in the MidAmerican control area. The Commission will accept MidAmerican's Sales Tariff for filing to be effective August 7, 2005 (the refund effective date in this proceeding), as requested.¹⁶

19. To the extent that MidAmerican made any sales under MidAmerican's market-based rate tariff in the MidAmerican control area since the refund effective date¹⁷ in this proceeding at rates that were above the rates under the mitigation proposal accepted herein, MidAmerican is directed, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, we direct MidAmerican to file a refund report within 15 days after making refunds. If no refunds were due, MidAmerican is expected to file with the Commission within 30 days of the date of issuance of this order so stating.

The Commission orders:

(A) MidAmerican's Sales Tariff is hereby accepted for filing to be effective August 7, 2005, as discussed in the body of this order.

(B) The Settlement is hereby approved, as discussed in the body of this order.

(C) MidAmerican is hereby ordered to make refunds within 30 days of the date of issuance of this order, with interest, calculated pursuant to 18 C.F.R. § 35.19(2) (2006), and to file a refund report with the Commission within 15 days of the date refunds are made, as discussed in the body of the order. If no refunds are due, MidAmerican is directed to file with the Commission within 30 days of the date of issuance of this order so stating.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁶ FERC Electric Tariff, Original Volume No. 11, First Revised Sheet Nos. 2-6 (superseding Original Sheet Nos. 2-6), First Revised Sheet No. 7, Second Revised Sheet No. 8 (superseding First Revised Sheet No. 8).

¹⁷ The refund effective date in this proceeding is August 7, 2005.